

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

3:16-cr-00051-BR-16

Plaintiff,

ORDER TO SHOW CAUSE AS
TO DEFENDANT KENNETH
MEDENBACH

v.

KENNETH MEDENBACH,

Defendant.

BROWN, Judge.

This matter comes before the Court *sua sponte* regarding the litigation practices of *pro se* Defendant Kenneth Medenbach. At Medenbach's *Faretta* hearing on March 11, 2016, the Court advised Medenbach that he "must obey the Court's rulings, whether [he] agree[s] with them or not." Tr. of Proceedings (#349) at 14. In addition, the Court advised Medenbach:

Any time a ruling is made that you don't agree with, you may except to it. Then it's on the record, and it can be reviewed later. But you have to accept the rulings, just as Mr. Schindler does when he makes an argument on behalf of a client and the ruling goes against him. He still has to follow it, and he saves the argument for later on appeal.

Id. The Court also engaged in the following colloquy with Medenbach:

The Court: So do you understand that if you represent yourself, you are bound by the rulings that I make, whether you agree with them or not?

Medenbach: Yes.

The Court: And if I direct that you're not allowed to raise a certain subject, you may not raise it.

Medenbach: I understand.

Id. at 19.

At that *Faretta* hearing Medenbach raised for the first time a motion to dismiss this matter the basis that, among other things, this Judicial Officer took an unconstitutional oath of office. *Id.* at 24-33. The Court denied Medenbach's Motion. *Id.* at 33.

On April 4, 2016, Medenbach filed a Motion (#361) for Reconsideration on the same basis. The Court addressed the matter at the regular, monthly Status Hearing on April 6, 2016; directed the government to file a response to Medenbach's Motion; and heard additional argument from Medenbach. At the conclusion of that hearing, the Court told Medenbach that the Court was "not going to reconsider this oath issue. I'm a judge of the United States District Court for the District of Oregon. You need to move on." On April 11, 2016, Medenbach filed an Amended Motion (#384) to Dismiss on materially the same basis. The government filed its Response (#405) to Medenbach's Motions on April 13,

2016. By Order (#440) issued April 20, 2016, the Court denied Medenbach's Motions.

At the monthly Status Hearing on May 4, 2016, Medenbach again raised the issue regarding the sufficiency of this Judicial Officer's oath of office. The Court initially noted Medenbach's statement and returned to another matter that the Court was taking up with the parties. As the Court was proceeding, however, counsel for Ammon Bundy interrupted and suggested the Judicial Officer "renew[] [her] vows" in order to resolve the issue. The Court responded: "Mr. Arnold, please take a seat. I've taken care of this matter three times now. I'm not going to take it up again. Mr. Medenbach was allowed to make his point for the record. Have a seat."

At the monthly Status Hearing on June 15, 2016, Medenbach again raised the issue regarding the sufficiency of this Judicial Officer's oath of office by providing the Court with two copies of an oath in different forms. At that time the Court had the following exchange with Medenbach:

The Court: Okay. Well, this is pretty easy to deal with, Mr. Medenbach. These are two copies of an oath in different forms. You've been making arguments about my oath. I'm not going to take up the arguments, but I will mark these for the record. We'll put them into evidence. They'll be there before the Court of Appeals, when you want to raise the issue before them.

Medenbach: Sure you don't want to initial it?

The Court: Mr. Medenbach, we're not going to play these games.

Medenbach: Okay.

The Court: If you want these papers in the record, I will direct the Clerk to mark them, they'll be put in the record, and that's all we're going to do on that subject.

Medenbach: Okay.

That was not all the Court had to do on that subject, however, because on July 22, 2016, Medenbach filed an Amended Motion (#921) to Dismiss Based on Unlawful Oath of Office. By Order (#932) issued July 26, 2016, the Court denied Medenbach's Amended Motion. In addition, that day the Court also issued an Order (#933) in which the Court advised Medenbach that it would not "entertain any further Motions based on his contention that the Judicial Officer's Oath of Office was invalid." The Court further stated:

If Medenbach again makes any such argument in any form, he will forfeit the right of self-representation because of his failure to adhere to the Court's Orders. If that occurs, the Court will reinstate Standby Counsel Matthew A. Schindler as Medenbach's counsel of record for the remainder of these proceedings.

Order (#933) at 3.

On August 10, 2016, Medenbach filed a civil lawsuit in this District against this Judicial Officer, the United States Attorney for the District of Oregon, and three Assistant United States Attorneys. *Medenbach v. Brown*, No. 3:16-cv-01617-MO. Medenbach also named the other Defendants in this criminal action

as Plaintiffs.¹ In his Complaint (#2) Medenbach's sole claim related to this Judicial Officer's alleged failure to take the appropriate oath of office. Medenbach sought up to \$50,000.00 in compensatory damages and \$100,000.00 per Plaintiff in that action, an order releasing all Plaintiffs who are in custody in this criminal proceeding, and the dismissal of this criminal action. By Opinion and Order (#4) issued August 16, 2016, Chief Judge Michael W. Mosman dismissed Medenbach's Complaint because (1) "it is untenable to use a civil case to dismiss a criminal case," (2) "this precise issue has been decided several times in the criminal case," and (3) "the merits of [Medenbach's] arguments are frivolous."

A court "may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct." *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975). "The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." *Id.* See also *United States v. Mack*, 362 F.3d 597, 601 (9th Cir. 2004).

It is clear that Medenbach is unwilling to follow this Court's orders. This Court has addressed Medenbach's arguments

¹ It is not clear which, if any, of the other Defendants in this criminal proceeding consented to being named as a plaintiff in Medenbach's civil action.

regarding this Judicial Officer's oath of office on the merits, permitted Medenbach to make his record with regard to that issue, and repeatedly advised Medenbach that it will not further consider his contentions regarding the oath.

Medenbach, nevertheless, has repeatedly re-raised this issue both during Court proceedings and in written motions. Medenbach's latest attempt to file a civil proceeding to re-raise this issue once again after the Court unambiguously advised Medenbach of the consequences of doing so demonstrates unequivocally that Medenbach simply refuses to acknowledge this Court's authority and to follow this Court's orders. Medenbach, therefore, has "engage[d] in serious and obstructionist misconduct," "abuse[d] the dignity of the courtroom," and used his status as a *pro se* litigant as a "license not to comply with relevant rules of procedural and substantive law." See *Faretta*, 422 U.S. at 834 n.46. Permitting Medenbach to continue to represent himself would create an unacceptable risk that he would continue to flout this Court's orders; further impede the efficient administration of justice in these proceedings; and conduct himself in a manner at the trial beginning September 7, 2016, that would prejudice the fair administration of justice, the government, and the co-Defendants who each have their own right to a fair trial.

Accordingly, on this record the Court orders Medenbach to

show cause in writing **no later than Noon, August 23, 2016**, why the Court should not terminate his *pro se* status and reinstate Matthew A. Schindler as Medenbach's counsel for all purposes in these proceedings.

IT IS SO ORDERED.

DATED this 19th day of August, 2016.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge